

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDRE SMALLS,

Plaintiff,

v.

P/O EDGAR VAZQUEZ,

Defendant

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**CIVIL ACTION
No. 17-2887**

DEFENDANT'S PRETRIAL MEMO

Defendant, Officer Edgar Vazquez, by and through undersigned counsel, hereby submits the following pretrial memorandum in accordance with Local Rule 16(c) and this Court's policies and procedures:

1. Jurisdiction

Jurisdiction is conferred by 28 U.S.C. §§ 1331 and 1343. Plaintiff's claim arises under federal law.

2. Brief Statement of Counter-Facts

Plaintiff alleges Officer Vazquez conducted an unreasonable search in violation of his Fourth and Fourteenth Amendment rights and brought this action pursuant to 42 U.S.C. § 1983. Plaintiff alleges Officer Vazquez "grabbed and caressed Mr. Smalls's genitals." Am. Compl. at ¶ 16 (ECF No. 25).

On June 28, 2016, two Philadelphia Police Officers, Defendant Edgar Vazquez and his partner Luis Cordero, arrested Plaintiff Andre Smalls for, *inter alia*, possession with intent to deliver. From their vehicle, the officers observed Plaintiff exchange narcotics for money with Tyrik Johnson, also arrested, inside a beer deli at 4705 Frankford Avenue. Officer Vazquez

testified at his deposition regarding three searches that were conducted of the Plaintiff: (1) an initial frisk in the deli by Officer Cordero, (2) a search prior to placing him in a patrol car by Officer Vazquez; and (3) a search prior to placing him in an emergency patrol wagon by Officer Vazquez.

Plaintiff inexplicably claims that Officer Vazquez, during the third search and in the presence of two other officers allegedly blocking Plaintiff from the view of the crowd, pulled Plaintiff out of the wagon, pulled his pants down to his knees, and grabbed and caressed his genitals. Officer Vazquez denies making contact with the Plaintiff's genitals. Officer Vazquez also denies the third search occurred after Plaintiff was placed in the wagon. The other officers, who operated the wagon, Officers Sean McLaughlin and Xuong Tran, do not recall a search conducted by Officer Vazquez, much less one in which they stood around Plaintiff while Officer Vazquez grabbed his genitals. Plaintiff pleaded guilty to possession of marijuana and the remaining charge of possession with intent to deliver or manufacture was nolle prossed.

3. Damages

Defendant denies that he is liable for Plaintiff's damages. Plaintiff asserts that he suffered emotional harm. There is no evidence of monetary damages.

4. Witness List

1. Plaintiff Andre Smalls
2. Tyrik Johnson
3. Police Officer Edgar Vazquez
4. Police Officer Luis Cordero
5. Police Officer Sean McLaughlin
6. Police Officer Xuong Tran
7. Police Officer Jonathan Cintron-Negron

8. Lieutenant Timothy Linneman

5. Exhibit List

1. All police paperwork produced, Bates labeled D1-D202, including, but not limited to:
 - IAD Investigation #16-406
 - Interviews with witnesses (Officers Vazquez, Cordero, McLaughlin, Tran and Cintron-Negron)
 - 75-48s (DC# 16-15-62931, DC #16-15-62912)
 - 75-49 (DC# 16-15-62931)
 - Philadelphia Police Department Arrest Record
 - Criminal Court summary for Plaintiff Andre Smalls
 - Letters sent to Plaintiff from IAD investigator
 - Criminal Docket CP-51-CR-0007675-2016
2. Plaintiff's Amended Complaint
3. Plaintiff's Deposition
4. Plaintiff's Responses to Defendants' discovery requests
5. Officer Vazquez's Deposition
6. Officer Cordero's Deposition
7. Officer McLaughlin's Deposition
8. Officer Tran's Deposition
9. Plaintiff's medical records – SCI Graterford and SCI Fayette
10. Subpoena to Tyrik Johnson, proof of service and deposition transcript

Defendant reserves the right to use any and all previously recorded testimony from any witnesses presented by parties. Further, Defendant reserves the right to use exhibits identified by Plaintiff in his pretrial memorandum.

6. Estimated Days for Trial

Defendant estimates two days for trial, in addition to jury selection.

7. Legal Issues

The parties will continue to work with one another with regards to any stipulations that can be made prior to trial.

Respectfully submitted,

/s/ Shannon Zabel

Shannon Zabel

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Dated: August 5, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on the date below, Defendant's Pretrial Memorandum was filed via the Court's electronic filing system and is available for downloading by all parties of record.

Dated: August 5, 2019

/s/ Shannon Zabel
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